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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

KIMBERLY WILLIAMS,

Plaintiff and Respondent,

v.

UNION PACIFIC RAILROAD
COMPANY,

Defendant and Appellant.

A126345

(Alameda County
Super. Ct. No. RG06251955)

Kimberly Williams was awarded a judgment on special verdict for \$1.6 million against her former employer Union Pacific Railroad Company due to racial and gender discrimination. Union Pacific appealed, and the parties have settled their dispute. They have filed a request for a stipulated reversal of the judgment. We deny their request because the parties have failed to make the showing required by Code of Civil Procedure¹ section 128, subdivision (a)(8) warranting a stipulated reversal.

FACTUAL AND PROCEDURAL BACKGROUND

The judgment in this case was filed in the superior court on June 25, 2009. The parties have neither designated nor filed the record in this appeal.² Thus, we will decide

¹ All further statutory references are to the Code of Civil Procedure.

² This court initially granted Union Pacific's motion for an extension of time to file its designation of the record on appeal. After Union Pacific failed to file its designation by the extended date, this court dismissed the appeal. Union Pacific then filed a motion to vacate the dismissal of the appeal, and a request for stipulated reversal of the judgment. This court has granted the motion to vacate the dismissal, reinstated the

their request on the basis of the joint declaration of counsel submitted in support of the request, and the judgment on special verdict appended to the joint declaration. The following description is derived from those documents.

Kimberly Williams sued Union Pacific Railroad Company after she was terminated from her job at the end of her 60-day probationary period. She claimed she was subjected to disparate treatment on account of her race and gender because lower level employees involved in her training who were motivated by racial animus, prepared negative performance evaluations that were “innocently relied upon by upper level managerial employees.” A “substantial part” of Williams’s case was based on comments made by a particular male employee who was too ill to attend the trial and died shortly thereafter.

The jury found that Williams’s race and gender motivated Union Pacific’s termination of her employment, and awarded her over \$1.6 million in damages, including approximately \$340,000 for back pay, \$1.2 million in future wage loss, and \$70,000 for emotional distress. The jury declined to award punitive damages.

DISCUSSION

A. Legal Standards

To reverse a superior court judgment upon the stipulation of the parties, we are required to make two findings. We must find that: “(A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal[, and that](B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement.” (§ 128, subd. (a)(8).) In the absence of such findings, section 128 prohibits the reversal of judgments by the appellate courts pursuant to stipulation or agreement. (See *Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999, 1005-1007 (*Hardisty*).)

appeal to active status, and stayed Union Pacific’s obligation to file a designation of the record on appeal pending our consideration of the request for stipulated reversal.

Our local rules provide specificity and emphasize that parties moving to reverse a judgment by stipulation must make the showing required by section 128, subdivision (a)(8). Local rule 4 provides: “A motion filed in this court for stipulated reversal of a judgment of a trial court must include a joint declaration of counsel that (1) describes the parties and the factual and legal issues presented at trial; (2) indicates whether the judgment involves important public rights or unfair, illegal or corrupt practices, or torts affecting a significant number of persons, or otherwise affects the public or a significant number of persons not parties to the litigation (if the judgment is against a state licensee, the declaration must also disclose whether it exposes such person to any possible disciplinary proceeding); and (3) discloses whether the judgment sought to be reversed may have collateral estoppel or other effects in potential future litigation and, if so, whether any third parties who might be prejudiced by stipulated reversal of the judgment have received notice of the motion therefor. A copy of the judgment must accompany the motion. [¶] The parties must provide a sufficient showing to support the findings required by Code of Civil Procedure section 128, subdivision (a)(8).” (Ct. App., First Dist., Local Rules, rule 4.)

B. Application to this Case

1. Have the Parties Eliminated Any Reasonable Possibility that Reversal Would Affect the Interests of the Public or Nonparties?

The joint declaration avers that the judgment does not involve important public rights or concerns and would not have collateral estoppel effect in other cases because the facts of the case are “unique to these parties.” The declaration asserts that the jury’s finding of liability was “based primarily on the actions and comments of one individual, Mr. Wolfe, who was not a management employee, who had retired by the time of trial, and who has since died.” But discrimination by “lower-level employees” is also said to have played a part. Although a “substantial part of plaintiff’s case was based on purported comments of James P. Wolfe,” there is no description of the role these other employees had in the remaining aspects of Williams’s case. The declaration also states that “Union Pacific has not been sued in any other case that would implicate Mr. Wolfe’s

purported bias toward women or African-Americans and the statute of limitations for any such suit has run out.” But it does not appear that Union Pacific’s liability was predicated solely on the actions of Mr. Wolfe, nor that the parties have reason to be so certain about the expiration of the statute of limitations in other unidentified cases.

In any event, the potential preclusive effect of the judgment is not the only issue to be considered. The parties’ joint declaration makes no mention whether the judgment involves “unfair, illegal or corrupt practices,” as required by local rule 4. The jury found Union Pacific liable for illegal employment discrimination based on race and gender, and the declaration does not address the potential significance of overturning a judgment based on such findings. The parties cite no case law to support their request, and our research has uncovered no precedent to support such a stipulated reversal of a judgment for employment discrimination. We are thus unable to conclude there is no reasonable possibility that reversal would affect the interests of the public or nonparties. (See *Hardisty, supra*, 124 Cal.App.4th at pp. 1011-1012.)

2. Do the Parties’ Reasons for Requesting Reversal Outweigh the Erosion of Public Trust that May Result from the Nullification of a Judgment and the Risk that the Availability of Stipulated Reversal will Reduce the Incentive for Pretrial Settlement?

While the joint declaration describes the parties and the issues, discusses collateral estoppel and public rights, and the public trust, it contains no explanation of the reasons the parties are seeking reversal. The absence of this factor alone weighs heavily against granting their request. As noted in *Hardisty*, “[t]he reasons the parties request reversal cannot be shown to outweigh the erosion of public trust that may result from the nullification of a judgment unless the reasons are fully revealed.” (*Hardisty, supra*, 124 Cal.App.4th at p. 1008.) The parties do not contend the jury verdict in this case was manifestly erroneous and the judgment would be reversed if addressed by this court on the merits. (See *id.* at pp. 1011-1012.) Instead, the joint declaration suggests that Union Pacific’s potential arguments on appeal are of questionable strength and relate chiefly to the measure of one element of damages, i.e. the amount of future wage loss awarded by

the jury.³ To the extent that a stipulated reversal may simply assist the parties in resolving their dispute,⁴ that “is the very idea repudiated by the 1999 amendment to section 128.” (*Hardisty, supra*, at p. 1010.)

When the Legislature amended section 128 to reverse the presumption in favor of stipulated reversals, it acted to move California policy closer to the federal and prevailing view that vacatur of a judgment is justified only in exceptional circumstances. (See *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership* (1994) 513 U.S. 18, 29.) It did so, in effect, by adopting Justice Kennard’s dissent in *Neary v. Regents of University of California* (1992) 3 Cal.4th 273, 286, which cautioned that stipulated reversal of judgments “undermines judicial efficiency by encouraging parties to try cases rather than settle them,” and “erodes public confidence in the judiciary by fostering the perception that litigants having sufficient wealth may buy their way out of the ordinary collateral consequences of public adjudications.” (*Id.* at p. 294; see *Hardisty, supra*, 124 Cal.App.4th at p. 1006.) These considerations weigh against granting the request for stipulated reversal of the judgment in this case, particularly in light of the parties’ failure to explain the reasons for requesting reversal. (See § 128, subd. (a)(8)(B); *Hardisty, supra*, at pp. 1008-1009, 1012 [denying vacatur when the parties gave no reason for requesting reversal].)

Our denial of this request for stipulated reversal should not bar the parties from settling this case. As Justice Kennard observed in her dissent in *Neary*, “[p]arties are free

³ The joint declaration states: “Union Pacific believes that its arguments for reversal in this Court present[] substantial legal questions. At the same time, Union Pacific recognizes that the odds favor affirmance and that even if this Court accepted one o[r] more of its arguments, one likely outcome would be a retrial limited to front pay damages. In that event, even a significantly reduced damages award after a retrial might well be partially or fully offset by the additional attorney fees Union Pacific would incur under FEHA. Thus, there is a substantial possibility that any victory for Union Pacific in this Court would be pyrrhic causing substantial consumption of party and judicial resources yet providing only limited potential for significant monetary relief.”

⁴ The declaration represents that “the jury’s verdict and factual determinations allowed the parties finally to come to a settlement which could not reasonably have been achieved short of trial.”

at any time to settle their private dispute on terms mutually agreeable, and should be encouraged to do so. What they should not be free to do is to include within those terms of settlement the destruction of a judgment, a public product fashioned at the cost of public resources, and to require an appellate court to accomplish that destruction merely to facilitate resolution of their private dispute.” (*Neary v. Regents of University of California, supra*, 3 Cal.4th at p. 295.)

DISPOSITION

The request for stipulated reversal of the judgment is denied. The designation of the record on appeal shall be filed within 15 days of this order. (See Cal. Rules of Court, rule 8.121.)

Siggins, J.

We concur:

McGuinness, P.J.

Jenkins, J.

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